LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
AUG 20 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-108

THE INGALLS SHIPUBILDING DIVISION
OF LITTON SYSTEMS, INC.,

Petitioner,

versus

AMERICAN ZINC CO., WILBUR ELLIS CO., INC., ET AL.,

Respondent,

and

JACOB A. FOSTER, ET AL.,

Respondent,

VERA CRUZ CIA. NAVIERA, S.A., ETC., ET AL.,

Respondent,

BRIEF FOR RESPONDENTS AMERICAN ZINC CO., WILBUR ELLIS CO., INC., ET AL. IN OPPOSITION

FRANCIS V. ELIAS, of
DONOVAN, DONOVAN, MALOOF & WALSH
161 William Street
New York, New York 10038
Attorney for Respondents,
American Zinc Co.,
Wilbur Ellis & Co., Inc. et al.

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Regulations Involved	2
Statement of the Case	2
ARGUMENT	7
CONCLUSION	12

TABLE OF AUTHORITIES

Statutes:

The River and Harbours Act—33 C.F.R. 401, 403 ..... 2, 3n

Regulations:

U. S. Coast Guard Regulations—33 C.F.R. 66.01-5 ..... 2, 3n

Cases:

Atlantic Pipeline Co. v. Dredge Philadelphia (D.C. Pa. 1965) 247 F. Supp. 857, aff'd. (3rd Cir. 1966), 366 F. 2d 780 ..... 3n, 4n

Birnbaum v. Birrell, 17 F.R.D. 409 (S.D.N.Y. 1955) 7

Brooks Scanlan Corporation v. United States, 265 U.S. 106 (1924) 8

PAGE

Casement & Co. v. Brown, 148 U.S. 615 ..... 7n

C. & O. Railway Co. v. U. S., (E.D. Mich. 1962) 1964 A.M.C. 2651 ..... 4n.

Delno v. Market St. Ry. Co., 124 F. 2d 965 (9th Cir. 1942) 7

Eastern S.S. Co. v. Dock Co., 256 F. 497 (1st Cir., 1919) 9

F. S. Royster Guano Co. v. Outten, (4th Cir. 1920), 266 Fed. 484 ..... 7n

Fort Fetterman v. South Carolina State Hwy. Dept. (4th Cir. 1958) 261 F. 2d 563 ..... 4n

In re Hibbard, 27 F. 2d 686 (2nd Cir., 1928) 9

Indian Towing Co., Inc. v. United States, 350 U.S. 961 [61]; 76 S.Ct. 64 [122]; 100 L.Ed. 765 [48], (1955) 7n

J. Lauritzen v. Chesapeake Bay Bridge and Tunnel District, et al, (D.C. Va. 1966) 259 F. Supp. 633, affd. in part and revd. in part (4th Cir. 1968), 404 F. 2d 1001 ..... 4n, 7n

Langnes v. Green, 282 U.S. 531 (1931) 8

Lines v. Falstaff Brewing Co., 233 F. 2d 927 (9th Cir. 1956) 7

La Crevatte V., Inc. (S.D. Ala, 1968) 1969 A.M.C. 198, 201 ..... 3n, 7n

M/S Bella Dan, 1967 A.M.C. 2295, 2304 (1967) 4n, 7n

Russell, Poling & Co. v. United States, (2d 1958), 252 F. 2d 167 ..... 4n

PAGE

Seaboard Air Line Railroad Co. v. United States, 261 U.S. 299 (1923) 8
Sinclair Refining Co. v. S.S. Green Island, 426 F. 2d 260 (5th Cir., 1970) 9
Standard Oil Co. v. Southern Pacific Co., 268 U.S. 146 (1925) 8

The Amiable Nancy, 16 U.S. 546 (1818) 8
The Baltimore, 75 U.S. 377 (1868) 8
The Manhattan, 10 F. Supp. 45 (E.D. Pa., 1935) aff'd 85 F. 2d 427 (3rd Cir., 1936) cert. den'd sub nom. U. S. v. Bessemer, 300 U.S. 654 (1936) 9
The Natchez, 78 F. 183 (5th Cir., 1896) 9
The Pennsylvania, 19 Wall. 125, 86 U.S. 125, 22 L.Ed. 148 (1873) 4n, 7n
The President Madison, 91 F. 2d 835 (9th Cir., 1937) 9
The Umbria, 166 U.S. 404 (1896) 8, 9
The Sovereign of the Seas, 139 F. 812 (E.D. Va., 1905) 9
The Styria v. Morgan, 186 U.S. 1 (1902) 7
The William Chisholm, 153 F. 704 (6th Cir., 1907) 9

United States v. Benedict, 261 U.S. 294 (1923) 8
United States v. D'Argento, 227 F. Supp. 596 (N.D. Ill., 1964) 8
United States v. Knohl, 379 F. 2d 427 (2nd Cir. 1967) 7
United States v. McCarthy, 292 F. Supp. 937 (S.D. N.Y., 1968) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-108

THE INGALLS SHIPUBILDING DIVISION OF LITTON SYSTEMS, INC.,

Petitioner,

versus

AMERICAN ZINC CO., WILBUR ELLIS CO., INC., ET AL.,

Respondent,

and

JACOB A. FOSTER, ET AL.,

Respondent,

VERA CRUZ CIA. NAVIERA, S.A., ETC., ET AL.,

Respondent,

BRIEF FOR RESPONDENTS AMERICAN ZINC CO., WILBUR ELLIS CO., INC., ET AL. IN OPPOSITION

Opinions Below

The Findings of Fact and Conclusions of Law of the United States District Court for the Southern District of Mississippi, Southern Division are reported at 313 F. Supp. 671 and are also reproduced in the Appendix to the Petition for a Writ of Certiorari as are the judgments of that

Court. The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 441 F. 2d 1100 and is also reproduced in the Appendix.

Jurisdiction

Respondents, American Zinc Co., Wilbur Ellis Co., Inc. (hereinafter referred to as "Cargo Interests") do not question the jurisdiction as set forth in the Petition.

Questions Presented

Questions 1 through 4 as set forth in the Petition do not assert questions upon which the basic award granted Cargo Interests by the courts below could be reversed. The Statement of the Case and Petitioner's argument as to the remaining question having to do with interest in fact indicates the question is as follows: Did the court below in the matter of the cross-appeal properly reverse the trial court and allow prejudgment interest to Cargo Interests?

Statutes Involved

The River and Harbours Act—33 C.F.R. 401, 403.

Regulations Involved

Cargo Interests do not dispute the involvement of the regulation set forth in the Petition but urge the addition of the following as an involved regulation: U. S. Coast Guard Regulations—33 C.F.R. 66.01-5.

Statement of the Case

Petitioner's statement of the case is substantially correct to the extent that it presents same. While Petitioner's statement does acknowledge that its buoy in question was not

lighted or positioned as required by the U. S. Coast Guard, it is silent as to Petitioner's Shipway No. 1 having exceeded its length as authorized by the U. S. Army Corps of Engineers.[1] For obvious reasons the Petitioner's statement also fails to mention that as to each of these three failings, the trial court found Petitioner to have violated a federal statute and, thereby, guilty of negligence per se.[2] Nor does

---

[1] (Finding of Fact No. 24) As discussed above, Ingalls had received authority from the U.S. Corps of Engineers to extend its No. 1 Shipway a total of 373 feet from Station 00, the point at which it enters the river; nevertheless, the U.S. Corps of Engineers Survey made on June 6, 1969, the day after this collision, revealed that the north side groundway of the No. 1 Way from the waterline to the northwest corner which was struck by the "Stella Maris" actually measured 420 feet. Thus, it exceeded its authorized length by 47 feet (Ex. C-46).

[2] (Conclusion of Law No. 4) Defendant and third party plaintiff, Ingalls, in extending its Shipway No. 1 a total distance of 420 feet in a westerly direction into the Pascagoula River from the East shore thereof at Station 00, exceeded the length of the Way beyond that authorized by the U.S. Army Corps of Engineers Permit (Ex. C-36), and thus violated the River and Harbors Act (33 U.S.C. 401, 403). This violation gives rise to the presumption of negligence per se and results in the creation of an unlawful obstruction to navigable waters. *La Crevatte* v., *Inc.* (S.D. Ala., 1968) 1969 A.M.C. 198, 201; *Atlantic Pipeline Co.* v. *Dredge Philadelphia* (D.C. Pa., 1965) 247 F. Supp. 857, affd. (3rd Cir. 1966), 366 F. 2d 780.

(Conclusion of Law No. 5) The defendant and third party plaintiff, Ingalls, was legally responsible for maintaining Buoy No. 2 to adequately mark its Shipway No. 1 off the outer or western edge thereof and to properly maintain this navigational aid to determine that its lights were functioning and that it was in proper position. It negligently failed to discharge this duty in violation of both the Permit issued by the U.S. Corps of Engineers and the U.S. Coast Guard Regulations. 33 C.F.R. 66.01-15. Ingalls had actual notice through its maintenance department manager, Riley, that the light on the buoy was not burning on June 1, 1969, and knew, or through the exercise of reasonable care, should and would have known through proper inspection and maintenance, that this buoy was out of position on that date as it was on June 5, 1969 at the

it mention that the Petitioner had actual notice of the buoy light being extinguished[3] and that it knew or should have

---

time of the collision. Since Riley testified that Buoy No. 2 was in approximately the same position on June 6, 1969, the day following the collision, that it was on June 1, 1969, four days before the collision, and in view of the fact that the Buoy was approximately 125 feet east or toward the land from the end of Shipway No. 1 and the "Stella Maris" was approximately 125 feet west or outside said Buoy at the time of the collision, the collision would not have occurred had the unlighted Buoy on June 5, 1969 at the time of the collision been in its proper and designated position. *Russell, Poling & Co.* v. *United States,* (2nd Cir. 1958), 252 F. 2d 167; *C. & O. Railway Co.* v. *U.S.,* (E.D. Mich. 1962) 1964 A.M.C. 2651.

(Conclusion of Law No. 6) The above deviation by Ingalls constitute statutory violations. *Fort Fetterman* v. *South Carolina State Hwy. Dept.,* (4th Cir. 1958) 261 F. 2d 563; *J. Lauritzen* v. *Chesapeake Bay Bridge and Tunnel District, et al,* (D.C. Va., 1966) 259 F. Supp. 633, affd. in part and revd. in part (4th Cir. 1968), 404 F. 2d 1001; *Atlantic Pipeline Co.* v. *Dredge Philadelphia,* (D.C. *Pa.,* 1965), 247 F. Supp. 857, affd. (3rd Cir. 1966) 366 F. 2d 780. These statutory violations constitute negligence per se clearly calling for the application of the rule stated in *The Pennsylvania,* 19 Wall. 125, 86 U.S. 125, 22 L.Ed. 148 (1873), to the effect that the burden rests upon the party guilty of a statutory fault to show, not only that probably his fault did not contribute to the disaster, but that it could not possibly have done so. *The Pennsylvania* rule, undoubtedly creates a strong presumption that the above substantial and material statutory faults, singularly or together, were the proximate contributing causes of the collision and places upon the offender the burden of establishing that such violation could not with reasonable possibility have contributed to the collision. *The Fort Fetterman* v. *South Carolina State Hwy. Dept., supra,* at 563, 567, 569. Applying these principles to the facts at hand this Court concludes that Ingalls has not met this required burden, and that its above statutory violations, and each of them, were proximate contributing causes of the collision and the resulting damage to the plaintiffs' cargo and the vessel "Stella Maris".

[3] (Finding of Fact No. 20) On Sunday, June 1, 1969, four days before the collision, Ingalls' maintenance manager, Riley, noticed that the lights on Buoy No. 2 were not burning but did not, between that time and the time of the collision of June 5, 1969, notify anyone, including the Pascagoula Bar Pilots Association or the U.S. Coast Guard, and took no corrective action (Ex. V-1-B). Buoy

known of the buoy itself being out of position on June 1, 1969 or four days prior to the collision.[4] It is also significant to the Petition hereunder discussion that the trial court found that "the collision would not have occurred had the unlighted Buoy on June 5, 1969 at the time of the collision been in its proper and designated position."[5] This mis-positioning was confirmed as early as July 6, 1969, the day following the collision, when both Petitioner and the U. S. Army Corps of Engineers found the buoy "to be 100 to 125 feet east or inshore of the outer or western extremity of Shipway No. 1."[6] Even in the absence of statutory fault,

---

No. 2 was not lighted on the night of June 5, 1969 immediately before and at the time of the collision. On or about June 7, 1969, Buoy No. 2 was taken ashore by Ingalls' employees and found to be in excellent condition except that the pipe holding the light had been broken off and the light taken, apparently by vandals. Also missing was the power cord which ran underwater from the buoy to Ingalls' onshore facilities where there was an on-off light switch which controlled the light on the buoy (Ex. V-1-B).

[4] (Conclusion of Law No. 5) Note 2, supra.

[5] (Conclusion of Law No. 5) Note 2, supra.

[6] (Finding of Fact No. 21) On Jun 6, 1969, Buoy No. 2 was not in its proper position, but it was determined by Ingalls and the U.S. Army Corps of Engineers to be 100 to 125 feet east or inshore of the outer or western extremity of Shipway 1 (Ex. V-1-A, pp. 7 and 8; Ex. C-48, C-58 and C-59, Item No. 37; Ex. C-46). Buoy No. 2 was in approximately the same position on June 6, 1969 as it was when observed by Riley on June 1, 1969 (Ex. V-1-B, pp. 16-18).

Petitioner's gross disregard of maintenance of the buoy as to functioning and positioning[7] constitutes negligence upon which Petitioner's liability could be based.[8]

---

[7] (Finding of Fact No. 19) On the date of the collision and for a long period of time prior thereto, the Ingalls' Maintenance Department, of which Henry Raymond Riley was Manager for over 2½ years at the time of this collision, was responsible for the maintenance of Buoy No. 2, including the lighting thereof (Exs. V-1-A, p. 22; V-1-B, pp. 2, 4, 11, 16, 17, 40). However, Ingalls has no record of maintenance performed on Buoy No. 2 or of any inspection thereof during the 2½ year period that Riley was manager of this department dating back to 1967 (Ex. D-1B, pp. 26 and 27; Ex. V-1-A, p. 10). Ingalls' maintenance of Buoy No. 2 has always been limited to replacement of its lights when found not to be working. Riley did state that the positioning of the buoys, including Buoy No. 2, was the responsibility of the Hull Services Department, whose manager is Rudy Schillereff, but no one was apparently aware of this fact. There was no record of anyone in this department ever having checked the positions of the buoys.

(Conclusion of Law No. 13) Neither the vessel "Stella Maris", its owner nor crew was guilty of any fault or negligence which proximately contributed to cause this collision. The "Stella Maris" had a lookout properly stationed, and he was not negligent in failing to see and detect an underwater obstruction such as Ingalls' Shipway No. 1. See *M/S Bella Dan*, 1967 A.M.C. 2295, 2304 (1967). The captain of the "Stella Maris" exercised due care in permitting the pilot to navigate the ship up the Pascagoula River under the circumstances then and there existing and in placing reliance upon the proper stationing of the buoy, which the "Stella Maris" passed at an apparently safe distance. All of the above conclusions of law arrived at by the Court in absolving the pilot of any negligence which proximately contributed to the collision equally apply to the captain and crew members of the "Stella Maris". The improper positioning of Buoy No. 2 and the complete absence of any inspection program or actual inspections over a period of several years prior to this collision to ascertain the proper positioning of the buoy was one of the proximate causes of this collision in view of the fact that the Court has concluded that the improper positioning of Buoy No. 2 and the unauthorized extension of Shipway No. 1 in excess of its authorized length or extension out into the Pascagoula River were the sole proximate causes of the collision.

[8] (Conclusion of Law No. 7) The Court further finds from a preponderance of the evidence that: the defendant Ingalls, having established Buoy No. 2 as an aid to navigation marking the submerged Shipways, as acknowledged by it and as required by the

ARGUMENT

The Petition not having raised any question as to the basic award granted to them by the courts below, Cargo Interests will limit their remarks herein to the issue of prejudgment interest. As to this one issue, the Petition seeks review by this Court contending that the trial court properly exercised its discretion as the full dollar loss has not been proven. Accordingly, what constitutes the proper exercise of that discretion must be determined.

The term "discretion" indicates the absence of a firm rule which would guide a court in taking judicial action. *United States* v. *McCarthy*, 292 F. Supp. 937 (S.D.N.Y., 1968); *United States* v. *Knohl*, 379 F. 2d 427 (2nd Cir., 1967); *Lines* v. *Falstaff Brewing Co.*, 233 F. 2d 927 (9th Cir., 1956); *Delno* v. *Market St. Ry. Co.*, 124 F. 2d 965 (9th Cir., 1942). It cannot be construed as permitting arbitrary, inconsiderate or unequitable action. *The Styria* v. *Morgan*, 186 U.S. 1 (1902); *Birnbaum* v. *Birrell*, 17 F.R.D. 409 (S.D.N.Y. 1955).

United States Coast Guard and U.S. Corps of Engineers, had the duty to use reasonable care concerning the maintenance of its position, *Indian Towing Co., Inc.* v. *United States*, 350 U.S. 961 [61]; 76 S.Ct. 64 [122]; 100 L.Ed. 765 [48], (1955), and that it had actual notice through its maintenance manager Riley that the buoy was out of its proper position to such an extent as to endanger navigation. In view of the above findings of facts, Ingalls is held to have constructive knowledge of the movement of the buoy which could and would have been discovered through a reasonable and proper inspection or through the reporting thereof, in view of the fact that the light thereon was observed to be out on June 1, 1969. It failed to discharge these duties and its failure constituted negligence which proximately caused the collision in question, even in the absence of the applicability of the *Pennsylvania* rule to the facts of this case. See *M/S Bella Dan*, 1967 A.M.C. 2295, 2304 (E.D. Va., 1967), affd. in part and revd. in part, *J. Lauritzen* v. *Chesapeake Bay Bridge and Tunnel District*, (C.A. 4, 1968), 404 F. 2d 1001; *Indian Towing Co.* v. *United States, supra; Casement & Co.* v. *Brown*, 148 U.S. 615; *F. S. Royster Guano Co.* v. *Outten*, (4th Cir., 1920), 266 Fed. 484; *La Crevatte V., supra.*

On the contrary it requires the exercise of sound discretion as directed by reason and conscience with regard to that which is right and equitable under the circumstances so as to achieve a just result. *Langnes* v. *Green,* 282 U.S. 531 (1931); *United States* v. *D'Argento,* 227 F. Supp. 596 (N.D. Ill., 1964).

In its exercise of this discretion in matters involving the taking of property, this Court has held that in addition to the value thereof, the owner is entitled to compensation as will produce the full equivalent of that value as if it had been paid at the time of the taking and interest at a proper rate is a good measure by which to ascertain that additional amount. *Brooks Scanlan Corporation* v. *United States,* 265 U.S. 106 (1924); *Seaboard Air Line Railroad Co.* v. *United States,* 261 U.S. 299 (1923); *United States* v. *Benedict,* 261 U.S. 294 (1923). It is noteworthy that in these cases the federal government had properly requisitioned property pursuant to §10 of the Lever Act[9] which statute called for just compensation and was silent as to interest. Noting that a party is not normally entitled to interest from the United States unless statutorily provided, this Court held interest to be part of "just compensation". Certainly, an aggrieved party whose property has been destroyed is entitled to equal recourse as to a tort feasor and this Court has so held in admiralty matters. *The Umbria,* 166 U. S. 404 (1896); *The Amiable Nancy,* 16 U. S. 546 (1818). These holdings are consistent with the legal maxim of *restitutio in integrum* which admiralty courts employ as a guide in determining just compensation for an aggrieved party. *Standard Oil Co.* v. *Southern Pacific Co.,* 268 U. S. 146 (1925); *The Baltimore,* 75 U. S. 377 (1868). Furthermore, the First, Second, Fifth, Sixth and Ninth Circuits

[9] 40 Stat. 276.

and district courts in the Third and Fourth Circuits have held that prejudgment interest is necessary to make just compensation. *The President Madison,* 91 F. 2d 835 (9th Cir., 1937); *In re Hibbard,* 27 F. 2d 686 (2nd Cir., 1928); *Eastern S.S. Co.* v. *Dock Co.,* 256 F. 497 (1st Cir., 1919); *The William Chisholm,* 153 F. 704 (6th Cir., 1907); *The Natchez,* 78 F. 183 (5th Cir., 1896); *The Manhattan,* 10 F. Supp. 45 (E.D. Pa., 1935), aff'd 85 F. 2d 427 (3rd Cir. 1936) cert. den'd sub nom. *U. S. v. Bessemer,* 300 U. S. 654 (1936); *The Sovereign of the Seas,* 139 F. 812 (E.D. Va., 1905).

Under the rule as established by this Court in *The Umbria,* supra followed by the lower court herein, discretion to deny prejudgment interest must be based upon the existence of peculiar circumstances. Such circumstances include a delay in instituting suit, however, the action herein was commenced within a few weeks of the subject casualty. A delay in prosecuting the suit will also be considered but this is not true of the case at hand as the trial was held and a judgment was entered within ten months of the collision. Of course, Cargo Interests cannot be charged with delay in prosecuting the appeal as they were only cross-appellants in the court below and are respondents in this Court. There being no peculiar circumstances in the case at hand Cargo Interests cannot be denied prejudgment interest. *Sinclair Refining Co.* v. *S.S. Green Island,* 426 F. 2d 260 (5th Cir., 1970). Indeed, the equities involved as will be herein recited demand the granting of such interest.

The most careful reading of the record in the trial court, confirms that the Petitioner has failed to offer a scintilla of evidence to refute its negligence as to the subject buoy being unlighted and/or out of position. Petitioner's failure

in the above respect is quite understandable as it had knowledge of the buoy lights being out and it being mispositioned in advance of the collision. Furthermore, these facts were confirmed by its own personnel and the U. S. Army Corps of Engineers on the day following the collision. The absence of any such proof and the overwhelming proof to the contrary rendered futile any attempt on the part of the Petitioner to disprove its negligence. It is in this character, futility, that Petitioner's efforts as to the Cargo Interests have been cast since the institution of suit. Nonetheless, Petitioner has persisted in refusing to acknowledge its obvious liability to Cargo Interests. On the trial, Petitioner offered no proof to establish its having been free of fault but limited its proof to that based upon which it contended that Respondents, Jacob A. Foster (hereinafter referred to as "Foster") and Vera Cruz Cia. Naviera, S.A. (hereinafter referred to as "Vera Cruz") were also at fault. In the court below, Petitioner following the same tactic submitted some fifteen Specifications of Error, all but two of which deal solely with asserted errors of the trial court in exonerating Foster and Vera Cruz. One of the remaining two specifications (No. 1) was not a specification at all but merely a broad charge that the judgment of the trial court "was contrary to the law and the evidence of the case." The last (No. 8) challenges the trial court's holding as to the unauthorized length of Petitioner's submerged Shipway No. 1. An obvious absence from Petitioner's brief in the court below is any reference whatsoever to the trial court's two other holdings of statutory fault as to the buoy being unlighted and out of position. It is, therefore, abundantly clear that having determined it had an opportunity to share fault with one or both of the other defendants, Petitioner considered it no more expensive to litigate with all parties. The Fifth Circuit commented on the above recited cir-

cumstances and was obviously influenced by them in reversing the trial court and allowing prejudgment interest.[10]

Notwithstanding the above, Petitioner offers the unsupported assertion that the trial court ". . . had ample evidence and reasons for disallowing prejudgment interest. . ." Petitioner's Brief for Certiorari at p. 17. However, this is again contrary to the views of the court below.[11]

These facts clearly establish that Petitioner at no time offered a defense to the claims of Cargo Interests and the general allegation that the "damages were not so readily ascertainable" as found by the court below should avail Petitioner nothing. It was Petitioner's gross negligence as found by both the trial court and the court below that precipitates the need for the fixing of those damages. Furthermore, at the trial, proof was offered as to the invoice value of each shipment on the S.S. Stella Maris, the amount paid by underwriters on shipments or portions thereof lost and the amount of extraordinary expenses incurred by Cargo Interests as a result of the collision. This provided Petitioner with a close estimate of the loss. In addition all but two of the subject shipments consisted of fishmeal, the landed market value of which commodity is included in a daily publication of United States Department of Interior, Bureau of Commercial Fisheries. One of the remaining shipments consisted of whalemeal which is closely related to fishmeal so that its landed market value is also readily ascertainable. The invoice value of the remaining ship-

---

[10] 441 F. 2d 1100 at 1101 "Ingalls has never seriously disputed that it was guilty of negligence in failing to keep its buoy lighted and in place; rather Ingalls sought mainly in the court below and on this appeal to establish that the other parties were either more at fault than it, or at least mutually at fault with it."

[11] 441 F. 2d 1100 at 1101 "In this case, none of the peculiar circumstances usually considered to justify disallowance of prejudgment interest in admiralty collision suits is present."

ment is the same as its landed market value so that it is already known.

It is, therefore, respectfully submitted that in light of the equities and the absence of peculiar circumstances, the granting of prejudgment interest was clearly proper and within the well established law in admiralty collision cases and that the Writ of Certiorari should be denied.

CONCLUSION

For the reasons stated above, Respondents, American Zinc Co., Wilbur Ellis Co., Inc., et al. urge this Court to deny the Writ of Certiorari.

Respectfully submitted,

FRANCIS V. ELIAS, of
DONOVAN, DONOVAN, MALOOF & WALSH
161 William Street
New York, New York 10038
Attorney for Respondents,
American Zinc Co.,
Wilbur Ellis & Co., Inc. et al.

I certify that a copy of the foregoing brief in opposition to the Writ of Certiorari has been served on opposing counsel by depositing same in the U. S. Mail, postage prepaid, this 19th day of August, 1971.

Francis V. Elias

FRANCIS V. ELIAS